

PSJ2 Exh 120

1 of.

2 BY MR. HUDSON:

3 Q. Mr. Mollica, my questions are going to
4 be focused on pages 4, 5, 6 and 7 of this
5 document.

6 A. Are these numbers or numbered?

7 Q. No, I'm sorry, I don't believe the pages
8 are numbered.

9 A. You said 4?

10 Q. Yeah, where it says Settlement Agreement
11 with the State Board of Pharmacy. Then underneath
12 that, Giant Eagle #4098.

13 Do you agree or do you see at the front that
14 these are minutes of the December 5 through 7,
15 2011 meeting of the Ohio State Board of Pharmacy?

16 A. Yes.

17 Q. And Giant Eagle operated retail
18 pharmacies in Ohio; correct?

19 A. Yes.

20 Q. And do you know Kelly Chappell?

21 A. I'm familiar who she is.

22 Q. Who is Kelly Chappell?

23 A. A pharmacist.

24 Q. And was she a pharmacist at a Giant
25 Eagle pharmacy in Ohio?

1 A. Yes.

2 Q. And do you see on the seventh page of
3 this document -- I apologize it's two sided -- do
4 you see the signature of Kelly Chappell there
5 dated 11/11/2011?

6 A. I don't see a signature, no. I'm sorry.

7 Q. No problem.

8 A. I see a line where it has her name on
9 it, yes.

10 Q. You see the S?

11 A. Yes. Thank you.

12 Q. So it's an electronic signature.

13 A. Understood.

14 MR. KOBRIN: Ty, do you know if it's
15 related to the jurisdictional question?

16 MR. HUDSON: I don't.

17 BY MR. HUDSON:

18 Q. If you could, just take a moment to look
19 at the section of these minutes that start
20 Settlement Agreement with the State Board of
21 Pharmacy, Docket Number D-110714-197, that page
22 through the page which Ms. Chappell has signed.

23 MR. KOBRIN: I have a standing objection
24 to this because I think this incident and
25 everything related to it occurred outside of the

1 City of Cleveland, County of Summit, County of
2 Cuyahoga and any other jurisdiction relevant to
3 this Track One case. I'm not sure how this is
4 relevant.

5 (Witness reviewed the exhibit.)

6 THE WITNESS: I've read it.

7 BY MR. HUDSON:

8 Q. Mr. Mollica, have you had a chance to
9 review the settlement agreement between Giant
10 Eagle and the State Board of Pharmacy?

11 A. The four pages that start on page 4 and
12 end with Kelly Chappell's signature, yes.

13 Q. Yes. If you see on the first page
14 there, I guess a third of the way down on page 4,
15 it starts out R2012-102 Settlement Agreement with
16 the State Board of Pharmacy.

17 A. Yes.

18 Q. And before coming here today, were you
19 aware that Giant Eagle pharmacy entered into a
20 settlement agreement with the State Board of
21 Pharmacy in Ohio?

22 A. Yes.

23 MR. KOBRIN: Objection.

24 BY MR. HUDSON:

25 Q. You were aware of this particular

1 agreement?

2 A. I don't know the details of the
3 agreement, but I'm aware there was a situation in
4 that particular location and that we complied with
5 whatever the state board pieces were.

6 MR. KOBRIN: Ty, do you consent to our
7 standing objection on this being outside the
8 jurisdiction?

9 MR. HUDSON: Yes.

10 BY MR. HUDSON:

11 Q. Mr. Mollica, you've testified to your
12 knowledge, Giant Eagle always complied with the
13 law; right?

14 A. That's correct.

15 Q. But this would be an example where the
16 State of Ohio Board of Pharmacy charged Giant
17 Eagle with not complying with the law; correct?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: That's actually not how
20 I'm reading it, no.

21 BY MR. HUDSON:

22 Q. You don't read this as the State of Ohio
23 accusing Giant Eagle Pharmacy of not complying
24 with the law?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: Could you direct me to a
2 particular passage where it says that Giant Eagle
3 was compliant with the law?

4 BY MR. HUDSON:

5 Q. Was not compliant with the law?

6 A. Could you direct me to a part there?

7 Q. I'll just walk you through. We'll go
8 through numbers two, three.

9 Number two says, "Giant Eagle Pharmacy #4098
10 did from May 1, 2009 through January 21, 2011 fail
11 to provide effective and approved controls and
12 procedures to deter and detect theft and diversion
13 of dangerous drugs, to wit: The following
14 controlled substances and dangerous drugs where
15 stolen from the pharmacy, yet internal control
16 procedures failed to deter or detect the theft.
17 The drugs were stolen by an inadequately
18 supervised technician who admitted to a board
19 agent that the drugs were diverted to her addicted
20 husband and also sold to another individual."

21 A. I see that line, but I don't see a
22 reference that it's not complying with the law.
23 It sounds like a criticism of the internal
24 control.

25 Q. Who has the responsibility to create

1 internal controls?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Everyone including the
4 pharmacist, the company, everybody.

5 BY MR. HUDSON:

6 Q. Who is the named party in this action
7 that's brought by the Ohio State Board of
8 Pharmacy?

9 MR. KOBRIN: Object to form.

10 THE WITNESS: I don't know how to read
11 the legal document. Are you referring to Giant
12 Eagle 4098?

13 BY MR. HUDSON:

14 Q. Yeah. The legal entity is Giant Eagle;
15 right?

16 A. Yeah.

17 MR. KOBRIN: Object to form.

18 (HBC-Mollica Exhibits 6 - 7 were marked.)

19 BY MR. HUDSON:

20 Q. As an example, I'll show you. Let me
21 mark a couple more. We can look at those and
22 compare those. I hand you what I've marked
23 Exhibit 6. We'll mark this one as Exhibit 7.

24 If we take a look here, Exhibit 5 are minutes
25 of the December 5 through 7, 2011 meeting of the

1 supervised technician who admitted to a Board
2 agent that the drugs were diverted to her addicted
3 husband and also sold to another individual."

4 Do you see that?

5 A. I see that.

6 Q. And then down below, it's got a list of
7 drugs. Do you see there a series of hydrocodone
8 combination products?

9 A. Yes.

10 Q. Of different strengths; correct?

11 A. Yes.

12 Q. Then underneath that, it says, "Such
13 conduct is in violation of Rule 4729-9-05 of the
14 Ohio Administrative Code."

15 A. Yes.

16 Q. And this document shows Giant Eagle
17 entering into a settlement of these accusations;
18 correct?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: That's how I would
21 interpret it with the couple paragraphs I read.

22 BY MR. HUDSON:

23 Q. Sure. If Giant Eagle had the internal
24 control procedures in place like you talked about
25 that were tracking specifically each order as it

1 A. Yes.

2 Q. Number two is one of -- you understand
3 that number two then below is one of the
4 allegations or charges that was made by the state
5 Board of Pharmacy against this store?

6 A. Yes.

7 Q. And that is that Giant Eagle Pharmacy
8 #4098 did from May 1, 2009 through January 21,
9 2011 fail to provide effective and approved
10 controls and procedures to deter and detect theft
11 and diversion of dangerous drugs, to wit: The
12 following controlled substances and dangerous
13 drugs where stolen from the pharmacy, yet internal
14 control procedures failed to deter or detect the
15 theft; correct?

16 A. Yes. That's what it says.

17 Q. Then number three also describes the
18 same. When it carries onto the next page, it
19 actually specifically lists the drugs that were
20 admitted by a technician to a Board agent that
21 that list of drugs were diverted to her addicted
22 husband and also sold to someone else; right? Do
23 you understand that?

24 A. Correct.

25 Q. That are those are the facts being